
IN THE
United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

THE NORTHWESTERN STEAMSHIP COM-
PANY, LIMITED, Petitioner,

Appellant,

vs.

C. RANSOM, JOHN HANNAFIN, A. ARTAL,
GUST ANDERSON, ERIK JOHNSON, SAM
ATKINSON, WILLIAM LUNDBERG, J. L.
PORTER, TOM BERG, JACOB OSTERHOLM,
J. L. SAGE, JOHN BORLAND, J. R. MORE-
LAND, LOUIS MARTIN, MATT MATTSON,
WILLIAM R. PIERCE, H. A. BROADED, P.
McCORMICK, CHAS. KELLY, FRANK HAN-
NIGAN, ROASLIE PAPES, T. VANDENENK,
F. C. AVERY, A. O. JOHNSON, JOHN SULLI-
VAN, J. ABOHDEN, EMIL LINDQUIST,
FRANK SMITH, HADE ROARK, G. W. BELL,
ROBAK POWELL, PAT REDMOND and EMIL
STANK,

Appellees.

No. 1732

In the Matter of the Petition of THE NORTHWESTERN STEAM-
SHIP COMPANY, LIMITED (a Corporation), Owner of the Steamer
"SANTA CLARA," an American Vessel, for Limitation of Liability.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
NORHERN DIVISION

Petition for Rehearing

W. H. BOGLE,
CHARLES P. SPOONER,
IRA A. CAMPBELL,

323-4 Colman Bldg., *Proctors for Appellant.*
Seattle, Washington.

FILED

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*To the Honorable Judges of the Circuit Court of Ap-
peals of the United States for the Ninth Judicial
Circuit:*

Having carefully examined the opinion of the
Honorable Court, we think that, with propriety, we
may ask the court to consider whether this case be
not one in which it will be proper to grant a re-hear-
ing to the appellee upon the ground that:

No award of damages should be made to any of the parties who have failed to file claims as prescribed by the Rules of the District Court of the Western District of Washington and the Rules of the Supreme Court of the United States, and who have not testified or offered any proof in support of any claims for damages they may have had.

It is true that the District Court entered an order on the 9th day of March, 1908, permitting the filing of a joint answer, and that such answer was served as required in such order on the 20th day of March, 1908. On the 23rd day of March the court entered an order directing the issuance of a monition, which monition commanded all persons claiming any loss, damage or injury arising out of, or occasioned by, the voyage in question, to appear before the Commissioner, appointed by the court, and *make due proof of their claims*. On the same day, to-wit: March 23rd, the Court entered an order of reference directing that proof of said claims and the contest thereof, if any, be made before the Commissioner as prescribed by the rules and practice of the court. It thus appears that subsequent to the order permitting the filing of a joint answer and service of the latter, the court entered further orders directing that proof of claims be made before the Commis-

sioner and that such proof, and contest of the claims, be made as prescribed by the District Court Rules.

The alleged claimants failed to comply with such orders, for Rule 85 provides: "Proof of claims presented to the Commissioner shall be made by or before the return day of the monition by *affidavit* specifying the nature, grounds and amounts thereof, the particular dates on which the same accrued, and what, if any, credits were given thereon, etc. Any claim so objected to must be established by further *prima facie* proof on notice to the objecting party as in ordinary cases."

First: No proof of claim to the Commissioner was made by any claimant *by affidavit*. Other than the joint answer no claim was made, and yet the order directing proof thereof by affidavit was entered by the court subsequent to the order permitting the joint answer and its service in the case. The order directing proof by affidavit must be given some significance, must have been intended to have had some effect, and yet the only effect it could have, called for a compliance not made or pretended to be made by any of the alleged claimants. It is in this respect that we cannot but feel that there was a total failure on the part of the alleged claimants, and that they had no sufficient standing in the proceeding.

Second: Assuming, without so admitting, that the joint answer was sufficient without compliance with the rule requiring "proof by affidavit," yet, if it were so, such claims were objected to by the appellee, and upon such objection the rule (85) required that such claims must be established by *further prima facie proof* on notice to the objecting party as in ordinary cases. The only further proof offered to establish such claims was the testimony of F. C. Avery, Hade Roark, Emil Stank, A. C. Johnston, Patrick Redmond and William Lundberg in support of their own respective claims. No proof or testimony was offered by any of the remaining twenty-six alleged claimants, and so far as the record shows, these twenty-six may have suffered no damage in any respect whatsoever. So far as the record shows, these twenty-six may have had first class accommodations and received treatment of the highest order; so far as the record shows they may in the meantime have passed this life. The rule prescribes that the claims shall be established by further proof on notice to the objecting party, and yet as against the "twenty-six," appellee had no notice of any proof of claim of damages suffered by them. Of the six claimants who testified, appellee had an opportunity

to examine them as to damages suffered by them, but no such opportunity was given it as against those who did not appear. That there was no pretense of any "further proof" to establish their alleged claims was so considered by the Commissioner before whom proof was ordered to be made. Rule 85 provides: "The Commissioner shall, on the return day of the monition, file in open court a list of all claims presented to him." Rule 55 of the Supreme Court provides that the Commissioner shall make report of the claims so proven. The Commissioner did make such report, and his certificates recites:

"I further certify and report that proofs were made before me as Commissioner in the above entitled court, for the *following claimants*, in support of their *respective claims*, viz: *F. C. Avery, Hade Roark, Emil Stank, A. C. Johnston, Patrick Redmond and William Lundberg.*" No reference is made to any proof of claim by any of the remaining "twenty-six," and in this respect the record bears out the report of the Commissioner. And yet the court went beyond the Commissioner and awarded damages to alleged claimants who had made no legal *prima facie* proof on notice to the petitioner, and without any opportunity to contest any such claims. Our contention goes not merely to the want of pre-

sentation of proper claims, but to a total failure of proof in support of any such alleged claims. Want of such proof is not waived, and the judgment in this case without such proof, we cannot but feel, is taking property without due process of law.

This case is distinguished from the Oregon, 133 Fed. 609, in that objection was therein made by claimant to the taking of further proof, and no sufficient error was assigned. In the case at bar error was so assigned as to each of the particular claimants and the insufficiency of the evidence to justify the decree in favor of each was pointed out.

And finally, we respectfully suggest that the court again consider the points taken in our brief filed in the case, that there were no proper claims presented, and that there was no proof in support of any of the claims of the alleged claimants other than the six who appeared and testified.

Wherefore, upon the foregoing grounds, this appellee and petitioner respectfully prays this Honorable Court to grant to it a re-hearing of said cause.

W. H. BOGLE,

CHARLES P. SPOONER,

IRA A. CAMPBELL,

Proctors for Appellee and Petitioner.

I, Ira A. Campbell, of counsel for the appellee herein, do hereby certify that in my judgment the foregoing petition for a re-hearing is well founded, and that the same is not interposed for delay.

Ira A. Campbell

